

RAIN AND HAIL INSURANCE SERVICE, INC.)	AGBCA No. 99-128-F
and RAIN AND HAIL L.L.C.,)	
(Compliance Case IN-RHOO-118 (potatoes)))	
)	
Appellants)	
)	
Representing the Appellants:)	
)	
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)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

October 27, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On January 5, 1999, the Board received this appeal from Rain and Hail Insurance Service, Inc. (RHIS) and Rain and Hail L.L.C. (R&H) (Appellants¹), of West Des Moines, Iowa, involving the U. S. Department of Agriculture, Federal Crop Insurance Corporation (FCIC). The insurance company had entered into a Standard Reinsurance Agreement (SRA) with the FCIC for the 1995 and 1996 crop years. The SRA represents a cooperative financial assistance agreement to deliver multiple peril crop insurance under the authority of the Federal Crop Insurance Act, as amended, 7

¹ RHIS asserts that pursuant to a plan of reorganization approved and adopted by RHIS shareholders, R&H replaced RHIS as the operational entity responsible for the underlying contract, effective May 1, 1996 (Complaint at 2 (¶ 5)). Hence, the dual appellants, to which the Government has not objected. This decision refers to the appellants as the insurance company.

U.S.C. §§ 1501 et seq. Under the terms and conditions of the SRA, the insurance company gets reimbursed from the Government.

The insurance company sold insurance to potato producers for the 1995 and 1996 crop years, with such policies reinsured by the Government in accordance with the terms and conditions of the SRA. After the insurance company had calculated and collected premiums and paid indemnities to the insureds, the Government concluded that the insurance company had made various errors, which required adjustments to the premiums and indemnities, with the insurance company to refund to the Government amounts deemed to have been retained by the insurance company contrary to the terms and conditions of the SRA. This appeal ensued. The insurance company here maintains that it is entitled to retain amounts for premiums and indemnities relating to the insurance policies.

Regulation provides the Board with the authority to resolve this timely-filed matter (7 CFR 24.4(b), 400.169). The parties developed the evidentiary record and submitted the matter on the written record, without a hearing on the merits, in lieu of having the Board first resolve a Government motion for summary relief. Each party submitted a brief relating to the Government motion and a brief on the merits of the issues.

In its complaint, the insurance company states that the Government wrongfully assessed it with premium overstatements of \$26,959 and indemnity overpayments of \$276,258. The insurance company asks this Board to determine first, that the insurance company substantially complied with all policies, procedures, rules, and regulations of the FCIC; second, that it is not in material breach of the 1995 SRA; and third, that the Government is not entitled to reimbursement of \$303,217 (= \$26,959 + \$276,258) in alleged indemnity overpayments and alleged premium overstatements. Although the insurance company provides no specifics on how it arrived at its contested figures, the Government, in its answer, asserts that the insurance company is obligated to refund the full amount of the revised assessments relating to the policies it views to be in dispute, namely \$34,646 regarding premiums and \$311,246 regarding indemnities, for a total of \$345,892.

The calculation and collection of premiums from, and payment of indemnities to, an insured by the insurance company do not entitle the insurance company to retain money from the Government. Rather, the terms and conditions of the SRA dictate when the insurance company is entitled to payment from the Government. The record does not demonstrate that the insurance company is entitled to reimbursement under the SRA.

Regarding premiums, the dispute largely focuses upon production reports for previous years used in calculating the premiums. The SRA prescribes that if farm management records are used to support production reports, those records must be substantiated by records from a processor or marketing outlet, or other source. Absent substantiation, the Government assigns yields. Despite the specific determinations by the FCIC, both preceding this appeal and during the development of this record, the insurance company has not identified material in the record which demonstrates that a different calculation of premiums should have occurred. The insurance company has demonstrated no impropriety in the conclusions and calculations of the Government. Accordingly, the Board denies this aspect of the appeal.

Regarding indemnities, the focus of the arguments by the insurance company relates to the 1995 crop year, when the insureds harvested and stored (or shipped to a processor) potatoes. The insurance company maintains that it correctly determined the production to count to be zero for various units of the insureds, because the potatoes were damaged prior to the harvest by an insurable cause--the weather (both severe rains and drought) and disease. The Government maintains that the correct production to count was the weight of potatoes harvested and stored (or shipped to a processor), because there is inadequate support for the conclusion that the potatoes were damaged prior to the harvest.

The SRA dictates that the production to count is to include all potatoes of harvestable size and storable quality. The insurance policy specifies that it does cover any loss of production due to damage that occurs or becomes evident after the potatoes have been placed in storage. The evaluation of the potatoes is to be made by an adjuster at the time of the harvest, if the potatoes are placed in storage and, if the potatoes are not placed in storage but sent to a processor, a report by the processor may be utilized. The terms and conditions of the SRA explicitly state that if potatoes are marketed or stored without an acceptable inspection, the production to count is the gross weight of the potatoes marketed or stored. Here we find that the insurance company has not provided an acceptable inspection report by an adjuster or processor or established the results of an acceptable inspection; therefore, the gross weight of the potatoes marketed or stored is to be used. Although some potatoes were damaged by the growing conditions, the insurance company has failed to document with the accuracy required by the SRA the actual extent of damages at the time of harvest. Lacking adequate proof, that is, because no acceptable inspection occurred (which would provide the basis to conclude what damage occurred before the potatoes were placed in storage), the insurance company does not prevail. Under the SRA, the weight of the potatoes is the production to count. Accordingly, the Board denies this aspect of the appeal.

The insurance company has failed to demonstrate entitlement to any of the relief requested. Accordingly, the Board denies this appeal.

FINDINGS OF FACT

The SRA

1. For the 1995 crop year (which began July 1, 1994, and ended June 30, 1995), the FCIC entered into an SRA with Cigna Property and Casualty Insurance Company and Rain and Hail Insurance Service, Inc. (Exhibit A at 1-32) (all exhibits are in the appeal file). The SRA represents a cooperative financial assistance agreement to deliver multiple peril crop insurance under the authority of the Federal Crop Insurance Act, as amended, 7 U.S.C. §§ 1501 et seq. (Act). The parties agree that this SRA applied for the 1996 crop year as well. (Complaint at 2 (¶ 6); Answer at 1 (¶ 1)). The SRA,

including the Appendixes, all referenced documents and Federal Crop Insurance Corporation ("FCIC") Manual 13 and Manual 14 in effect at the start of the reinsurance year ("Agreement"), establishes the terms and conditions under which

the FCIC will provide premium subsidy, expense reimbursement, and reinsurance on multiple peril crop insurance policies sold or reinsured by the [insurance company].

(Exhibit A at 1.) The SRA incorporates by reference regulations promulgated under the authority of that Act, specifically 7 CFR Chap. IV (Exhibit A at 1). Thus, the FCIC is obligated to reinsure policies written on terms, including premium rates, approved by the FCIC, on crops and in areas approved by the FCIC. 7 CFR 400.166(a), 422 (1994). A disputes clause specifies: "If the [insurance company] disputes action taken by FCIC under any provision of this Agreement, the [insurance company] may appeal to FCIC in accordance with the provisions of 7 CFR 400.169" (Exhibit A at 21 (¶ V.R)).

2. The SRA specifies: "A portion of the premiums for crop insurance provided under this Agreement will be subsidized by FCIC in accordance with the provisions of the Act" (7 U.S.C. §§ 1501 et seq.) (Exhibit A at 11 (§ III)). In providing reinsurance, the FCIC pays a portion of the insurance company's retained ultimate net losses; that is, the FCIC reimburses the insurance company for a portion of the indemnities paid out (Exhibit A at 4-10 (§ II)).

3. The SRA specifies that the insurance company and its agents "must use standards, procedures, forms, methods, and instructions approved by FCIC in the sale and service of MPCCI contracts of insurance reinsured under" the SRA (Exhibit A at 16 (¶ V.F.6)).

4. As stated in the published regulations, the Government establishes premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which will be included in the actuarial tables for each county (7 CFR 422.2, 422.6). In the potato policy, the phrase "actuarial table" means "the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding potato insurance in the county" (7 CFR 422.7, Policy (¶ 17)). Despite the contention by the insurance company, the Board has not found, and the insurance company has not identified, language in the policy (or elsewhere) directing that potato coverage be identical in every county of the country. Rather, in the special provisions for potato crop insurance, dates for cancellation and termination are not identical for all states or counties (Exhibit B at 37-38 (¶ 11.b)), and as discussed below, there exist several explicit references in incorporated documents which distinguish between potatoes grown in northern and southern states.

Included acreage

5. Regarding the insured crop and covered acreage, the SRA, through the crop insurance policy specifies: "The crop insured will be potatoes planted for harvest . . . grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table" (7 CFR 422.7, Policy (¶ 2.a)). Also, "The acreage insured for each crop year will be potatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect" (7 CFR 422.7, Policy (¶ 2.b)). Further,

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any potatoes planted in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

(7 CFR 422.7, Policy (¶ 3.c).)

6. The potato policy contains direction on establishing the production guarantee:

You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

(7 CFR 422.7, Policy (¶ 4.d).)

7. Incorporated into the SRA (Finding of Fact (FF) 3), the National Crop Insurance Services 760 Manual, Underwriting Rules for Multiple Peril Crop Insurance, states for potatoes: "If farm management records are used to support production reports, they must be substantiated by records from a marketing outlet, processor, packer, first handler, etc." (Exhibit 6 at 1395 (¶ 5.D(17)(i))). The manual also identifies the required documentation for production that is farm-stored:

- a If potatoes are inspected prior to being placed in storage and there is damage due to insurable causes, records must show potatoes grading U.S. No. 2 or better in accordance with U.S. Standards or as otherwise specified on the actuarial table.
- b If an inspection is not made prior to storage, records must show the gross weight of stored potatoes.
- c If potatoes are weighed prior to being placed in storage, a copy of the weight slips and production measurements must be provided.

(Exhibit 6 at 1396 (¶ 5.D(17)(i)(3)).)

Premiums

8. “The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting” (7 CFR 422.7, Policy (¶ 5.a)).

Indemnities

9. The potato policy dictates that the insurance provided is against “unavoidable loss of production” resulting from adverse weather conditions or plant disease, among other causes, occurring within the insurance period (7 CFR 422.7, Policy (¶ 1.a)). A term and condition explicitly states: “We will not insure against any loss of production due to: (1) Damage that occurs or becomes evident after the potatoes have been placed in storage” (7 CFR 422.7, Policy (¶ 1.b)).

10. Under the potato policy, the insured is required to provide notice of damage or loss. In particular, the insurance provider “must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss if such production will not be delivered directly to a processing plant.” (7 CFR 422.7, Policy (¶ 8.b)).

11. Regarding claims for indemnity, the policy provides that any claim must be submitted not later than 60 days after harvest (or an earlier occurring condition). Moreover, “We will not pay any indemnity unless you: (1) Establish the total production of potatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and (2) Furnish all information we require concerning the loss.” (7 CFR 422.7, Policy (¶¶ 9.a, 9.b).) Further, the “total production (in hundredweight) to be counted for a unit will include all harvested and appraised production. (1) The extent of any loss may be determined at the time the potatoes are placed in storage or delivered to a processor.” (7 CFR 422.7, Policy (¶ 9.e).)

12. The general provisions of the policy provide for insurance against unavoidable loss of production resulting from specific causes occurring within the insurance period. The causes include adverse weather conditions and plant disease “subject to any exceptions or limitations with respect to causes of loss that are shown in the rates and rules.” (Exhibit B at 33 (¶ 3.a).) Further, under the general provisions, regarding adjustment procedures, the insurance company recognizes that it will apply the loss adjustment procedures used by the crop insurance industry (Exhibit B at 34 (¶ 4.c)).

13. Special provisions applicable to potatoes include the following admonition: “we do not cover any loss of production due to damage that occurs or becomes evident after the potatoes have been placed in storage” (Exhibit B at 36 (¶ 2)). Regarding claims for indemnity, special provisions state that the total production to be counted for a farm unit will include all harvested and appraised production. Moreover, “We reserve the right to determine the extent of any loss at the time the potatoes are placed in storage or delivered to a processor.” (Exhibit B at 36-37 (¶ 5.c.(1)).)

14. As to notice of damage or loss, the special provisions state:

In addition to the notice of loss required in the General Provisions No. 4, we must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss, if such production will not be delivered directly to a processing plant.

(Exhibit B at 37 (¶ 6).)

15. The Potato Handbook (Exhibit KK at 1252-82), incorporated into the SRA (FF 3), contains FCIC-approved directions for appraising potential production of potatoes and for determining the amount of harvested production to count. The introduction in the handbook specifies: "Care should be exercised to utilize the directions as they apply to the Northern Region or Southern Region." "ANY DEVIATIONS in appraisal methods MUST HAVE PRIOR AUTHORIZATION." Pennsylvania uses the Northern Region guidelines. The adjuster is required to select appropriate, representative samples in order to obtain an accurate appraisal. (Exhibit KK at 1254.) After selecting the recommended number of representative sample areas, the appraisal is to include weight determinations:

1. Weigh all potatoes in each sample that are of:
 - a. harvestable size (recoverable by digging equipment), and
 - b. storable quality (Northern Region only)/marketable quality (Southern Region only). Potatoes not considered storable include potatoes damaged by heat necrosis, or rot. See instructions for the Southern Region for definition of marketable.

(Exhibit KK at 1255.)

16. Specific instructions for the Northern Region, found in the potato handbook, describe the appraisal process which is to occur. For the basic policy:

Production-to-count under the basic policy will include all potatoes of:

- A. harvestable size (recoverable by digging equipment); and
- B. storable quality. (Potatoes not considered storable include potatoes damaged by heat necrosis or rot.)

No adjustments can be made to production meeting this criteria.

(Exhibit KK at 1255.) In contrast, the instructions for the southern region specify that "only marketable loss of mature potatoes will be considered production to count (except production with external defects). (Exhibit KK at 1261). Options identified for the Northern Region include the quality potato option, and the processing potato quality option (Exhibit KK at 1257-59).

17. The potato handbook contains instructions regarding the production worksheet. "The Production Worksheet is the final step in completing the potato appraisal prior to entering all pertinent data on the proof of loss. The form must be completed for both Preliminary and Final inspection." Moreover,

The percentage of potatoes to count, for stored or marketed potatoes, shall be the percentage as determined by an acceptable Federal/State Inspection or by a Company Inspection.

If potatoes are marketed or stored without an acceptable inspection, the production-to-count for such potatoes shall be equal to the gross weight (minus any determined dirt weight) of the potatoes marketed or stored.

(Exhibit KK at 1267, 1269-70) (emphasis added.)

18. The insurance company has provided for the record various Government-issued notices and bulletins with dates beginning in 1989 (Exhibit 22). The distinction between coverage in the northern and southern states is borne out by the materials, which also specify the limits of the insurance and the need to document properly any loss. For example, with a date of September 29, 1993, bulletin MGR 93-040 states in part:

Federal Crop Insurance Corporation (FCIC) has been informed that severe decay exists in some insured potato crops, primarily due to cool temperature and/or excessive moisture conditions. Some producers have determined that these potatoes are not storable because they will breakdown in storage. Concerns have been raised as to whether the decay damage is insurable and how the production to count should be determined.

FCIC-approved Potato policies state we do not insure against any loss of production due to damage that occurs or becomes evident after the potatoes have been placed in storage.

Unavoidable loss of production from decay due to adverse weather is considered as resulting from an insurable cause.

The production to count is to be determined on a case-by-case basis based on field determinations. An opinion from the Extension Service should be requested as to whether the damaged potatoes can be harvested, stored and/or marketed. An Extension Potato Pathologist may need to make an onsite review of the affected acreage to determine if the potatoes can be harvested, stored and/or marketed.

In the Northern Region, if the insured potatoes have suffered unavoidable damage due to decay resulting from insurable causes, to the extent that the potatoes are not harvestable and/or storable, do not count such production.

....

In either region, if field samples verify the affected tubers constitute 5 percent or more of the sample, the production to count for the sampled area may be considered zero; however, if the affected tubers are less than 5 percent of the sample, a tuber-by-tuber appraisal will be made.

If an insured elects to harvest tubers from areas affected by 5 percent or greater incidence of decay, a period of 60 days may be authorized for the insured to make disposition of the affected tubers. At the end of the 60-day period, the insured must agree to either: (a) destroy such potatoes in return for "zero" production to count; or (b) accept our tuber-by-tuber appraisal, which must be made prior to harvest. Any harvested production that is disposed of thorough selling or processing will be counted as production on the claim.

Loss adjustment personnel must document all inspections on an adjuster's special report or statement of facts, describing the condition of the crop.

(Exhibit 22 at 2561-62.)

19. With a date of October 4, 1994, bulletin MGR 94-027, addresses the stated subject of potato late blight and decay. The bulletin states, in part:

Companies are reminded that the potato policy does not provide protection against any loss of production due to damage that (1) occurs after harvest (the digging of potatoes) of the acreage, (2) occurs or becomes evident after the potatoes have been placed in storage, or (3) is due to the failure to follow recognized good potato farming practices.

(Exhibit 22 at 2563-64.)

General statements relating to potato production of the insureds

20. The insureds, whose policies are at issue in this matter (Earl J. Hite, Fred Hite, Kelly R. Hite, Robert Hite, Orchardvale Farms, Pleasant View Farms, Thomas Smithmyer, Richard Weakland, Richard A. Bender, Leo Karlheim), grew potatoes in Pennsylvania. For the 1995 crop year, each of the insureds purchased from the insurance company a basic crop insurance policy for potatoes; the insureds did not purchase a potato quality option (under which marketability would be the test for an insurable loss). For the 1996 crop year, each of the insured purchased from the insurance company a crop insurance policy for potatoes; some purchased a quality option. For each of these crop years, the insurance company obtained premiums from the insured and paid indemnities, as it deemed appropriate and in accordance with the terms of the policies. In the course of a compliance case investigation, after reviewing initial and subsequent information provided by the insurance company,

the Government calculated the premiums and indemnities it deemed to be in accordance with the terms and conditions of the SRA; the Government provided the insurance company with its revised determinations for each of the insureds here at issue (excluding Richard A. Bender, for whom the Government treated as closed its assessment totaling \$15,498, with \$755 for premium overstatements and \$14,743 in indemnity overpayments, because the correct amounts were reflected in a reporting database (Exhibit EE at 872-73)). The Government concluded that the insurance company was liable to the Government for a total of \$345,892; that is, \$34,646 for amounts relating to premium overstatements and understatements, and \$311,246 regarding indemnities. The insurance company sent a request to RMA (Risk Management Agency), dated May 21, 1998, seeking a determination pursuant to regulation, 7 CFR 400.169. Having received no response, the insurance company filed this appeal, received at the Board on January 5, 1999, based upon a deemed denial of its claim. In its complaint, the insurance company disputes a total of \$303,217 (\$26,959 relating to premiums and \$276,258 relating to indemnities), although it does not itemize the figures for the various insureds.² The Government has not issued a determination regarding the payment of interest by the insurance company for the amount of the Government-determined liability (or for the lesser amount which the insurance company appears, through its complaint, not to dispute).

21. In support of its contention that harvested potatoes of the insureds were damaged because of insurable causes, and should not be included in the production to count, the insurance company relies, in part, upon a letter dated September 15, 1995, addressed to "To Whom It May Concern" from an "Extension Agent/Agriculture" from a university, which states in full:

I recently observed the Atlantic potatoes at Rick Weakland's behind his potato storage. They exhibited in the ground, over 75% greening, which is un-marketable.

This was due to an extremely hard rain in July, which washed down the hills and a very dry August, which cracked open the soil and let light into most of the tubers, which caused the greening.

² Despite indications by the Government during the course of litigation that a review and redetermination by the compliance office would reduce the amount due, the review did not result in a variation in the payment due from the insurance company (Government Letter (Feb. 1, 2002)).

(Exhibit C at 55.) The insurance company relies upon this document to help establish the condition of potatoes other than those observed and described for Rick Weakland.

22. In addition, the insurance company offers in support of its determinations an "Adjuster's Special Report" addressed to E.L. Ross Inc. The report, dated October 2, 1995, identifies the insured as "potato insureds's, Pa.," states over the signature of the adjuster:

In working with Fred Claycomb, 9/28/95 in Cambria, and Somerset counties Pa., due to the hot dry summer, and continuing through the harvest season, potatoes being dug and sent to the buyers, are being rejected, due to adverse weather conditions mentioned above. Heat necrosis, green potatoes, etc. These causes are common to the entire growing area.

Be it noted, that potatoes going into storage, that damage has occurred during the insurance period, before harvest, and before being stored. It may be, these potatoes will have no market value.

It is common practice to store potatoes in this area until after the first of the year before marketing them.

(Exhibit C at 63 (with nominal corrections to hand-written text).)

23. After this paragraph, the Board makes findings regarding Earl J. Hite, the initial insured identified in the compliance case. These specific findings address the process and determinations that are the focus of this dispute. There also are limited specific findings for one other insured, which are representative of the production to count dispute when potatoes were sent directly to a processor. The details and variations for these and other insureds which are not described are not material to the resolution of this dispute; an exception involves the policy of Robert M. Hite, which is discussed separately. Of note, consistent with the SRA and the direction of the underwriting rules (FF 7), the Government deems to be unacceptable those production records of the insureds for prior years, which lack substantiation; accordingly, the Government utilizes an assigned yield for the purpose of calculating premiums (FF 6-8). The insurance company has failed to identify for this Board any particular document that supports a calculation different from that of the Government. Similarly, in accordance with the potato handbook direction that for potatoes marketed or stored without an acceptable inspection, the production to count is to include the weight of the potatoes (FF 17), the Government consistently concludes that the harvested and stored potatoes are to be included in the production to count, because the record does not support a conclusion that any given quantity of the potatoes was damaged at the time of harvest. The Government deems the reimbursement for the indemnities to be inconsistent with the SRA. The insurance company relies upon general statements, as noted in the above findings, or upon special reports of the adjuster, which state that potatoes are unmarketable, and therefore should be excluded from the production to count. (E.g., an adjuster's special report, dated February 8, 1996 states: "Insured placed potatoes in storage in fall after having 1 load rejected because of small size and bruising. As of this date no market has developed for potatoes that are below size standard for most chipping companies." (Exhibit N at

219.)) The insurance company has not identified for the Government or this Board any document that, consistent with the terms and conditions of the SRA, represents an acceptable inspection (FF 17) which would permit a different calculation of the production to count than that utilized by the Government.

Earl J. Hite

24. The Government issued an initial determination of insurance company liability regarding the insurance policy of Earl J. Hite (Exhibit E). The insurance company provided a response (Exhibit F). In its revised determination, dated April 9, 1998, the Government concluded that the insurance company is obligated to reimburse the Government under the terms and conditions of the SRA. In particular, for the insurance policy related to Earl J. Hite, the stated liability is \$791 for a 1995 premium overstatement, \$75,692 for a 1995 indemnity overpayment, and \$478 for a 1996 premium understatement. (Exhibit G at 101.)

25. The letter with the revised determination states:

FCIC determined that the [insurance company's] loss adjuster applied incorrect loss adjustment procedures when determining the insured's stored production for units 0101 and 0102. The adjuster determined the stored production for unit 0101 and 0102 to be zero. However, we determined from the insured's load records that the stored production for unit 0101 was 4,840 cwt. [hundredweight] and 5,867.0 cwt. for unit 0102.

(Exhibit G at 102.) Further, the letter states:

We disagree with the adjuster's determination that the potatoes sustained heat necrosis damage. Our review revealed that the potatoes from units 0101 and 0102 were harvested in September 1995, and placed in storage until March 2, 1996, the date the loss adjuster measured the potatoes and gave consent for the potatoes to be destroyed.

The fact that 10,707 cwt. of potatoes for the above units were harvested and placed in storage for six months shows the potatoes were of harvestable size and storable quality. Storing potatoes that have sustained heat necrosis damage for an extended period of time is not a recognized good farming practice because it can result in the potatoes sustaining even more damage. Furthermore, the inspection and grading sheet from [a potato chip processor] shows that on February 26, 1996, several samples of the insured's potatoes were inspected and graded. The inspection sheet does not show heat necrosis as a defect or damage in the graded sample of potatoes.

(Exhibit G at 102.)

26. The letter additionally states:

The potato loss adjustment procedure used by the crop insurance industry is the NCIS M502; MPCII Potato Handbook, which requires that for potatoes produced in Pennsylvania, which is in the Northern Region of the United States, a loss adjuster must include all potatoes of harvestable size (i.e., recoverable by digging equipment) and storable quality (Potatoes not considered storable include potatoes damaged by heat necrosis or rot). No adjustments can be made to production meeting this criteria, unless the insured has Potato Quality Option. Our review of the insured's policy file disclosed that for the 1995 crop year the insured did not have a Potato Quality Option in effect.

(Exhibit G at 103.)

27. Regarding the adjustments for the premium overstatements, the determination states that the individual was a new insured for the 1995 crop year and that he certified actual yields for the 1990 through 1994 crop years. The determination specifies, "Since we are only able to verify the accuracy of the 1994 and 1995 yields, the insured will be assigned 'T' yields for the remaining years in the 1995 and 1996 APH databases until additional production evidence is provided." (Exhibit G at 104.) (With a signature date of April 30, 1997, the insurance company had provided revised information, utilizing T yields for 1991, 1992, and 1993, while for 1994 it used 3,256.3 cwt. and 11,875.0 cwt. for units 0101 and 0102, respectively (Exhibit F at 88-89)). Further,

The NCIS 760; Section 5 (APH); Item D (Eligible Category B Crops and Procedures); Subtopic 17 (i.[e.] Potatoes) states that if farm management records are used to support production reports, they must be substantiated by records from a marketing outlet, processor, packer, first handler, etc. The NCIS 760 further states that if production is sold or delivered at the time of harvest the required documentation for APH purposes is settlement sheets for processing and fresh market potatoes. [The insurance company] should ensure that the 1994 production reflected in FCIC'S database for units 0101 and 0102 is 2,693 cwt. and 11,615 cwt., respectively.

FCIC concludes that the APH errors occurred because the insured failed to maintain production evidence to support information certified on his APH form. . . .

FCIC reaffirms its initial determination that [the insurance company's] loss adjuster applied incorrect procedures in determining the insured's production to count for units 0101 and 0102. [The insurance company] is thereby required to make the adjustments identified on the enclosed APH and monetary discrepancies for the 1995 and 1996 crop years. [The insurance company] must also ensure that the 1995 and 1996 APH databases reflect the correct yields.

(Exhibit G at 104-06.)

28. By letter of May 21, 1998, the insurance company sought a determination by the RMA, pursuant to 400.169(b), regarding Earl J. Hite and each of the other insureds involved in this matter (Exhibit II at 954-66). In support of the relief requested, the insurance company provided to the Government various documents (Exhibit II at 967-1243). Regarding the production by Earl J. Hite, the documentation generated by other than the insured does not indicate a farm number for years 1991 through 1994, or otherwise permit one to conclude that the identified production came from the insurable acreage at issue (Exhibit II at 1045-75). Without further detail, the submissions do not substantiate the alleged production as required by the SRA (FF 7).

29. Also included in the request to RMA, the insurance company provided materials relating to the production for the 1995 crop year. On February 26, 1996, the insured delivered potatoes for inspection by a potato chip processor (Exhibit II at 975). With a date of February 26, 1996, a report, "potatoes for chipping," from a potato chip processor identifies results of three 25 pound samples. For each sample, the report associates a weight of potatoes with various defects; for example, soft rot 0.0; sunburn 1.75; shatter bruise .50; dry fusarium 4.75; sprouts .25; internal sprouts 1.50. The report does not specify if multiple defects occurred in any potato. (Exhibit II at 971-74.) A bulk storage worksheet, dated March 2, 1996, signed by the adjuster and the insured, indicates that the insured produced 10,707 cwt. of potatoes. A narrative on the worksheet states that all potatoes were damaged due to drought and heat before storage. (Exhibit E at 72). A certification by the insured, dated March 2, 1996, states that the harvested potatoes are to be dumped, with the remark: "potatoes are not marketable due to drought" (Exhibit E at 74). Dated March 4, 1996, a letter from the vice president of procurement of a potato chip to the insurance agency states: "The potatoes at the EARL HITE storage are of poor quality due to weather conditions this past summer (1995), and of no market value" (Exhibit 25 at 2806). An adjuster's special report, dated March 5, 1996, states that potatoes were checked before they were harvested. The report states both that it was noted that potatoes were damaged and it was possible that they would not be marketable, and that all damage occurred during the insurance period before the potatoes were harvested. (Exhibit E at 73). The insurance company did not provide to the FCIC, RMA, or to this Board, any report by an adjuster indicating that an inspection occurred in accordance with the terms and conditions of the SRA. It should be noted that each of these reports was generated after storage and several months after harvest.

30. After failing to receive a reply from RMA to its letter of May 21, 1998, the insurance company filed this appeal, received at the Board on January 5, 1999, based upon a deemed denial of its claim.

31. Although placed in the record by the insurance company, certain documents are not pertinent to the 1995 potato crop at issue, because they post-date the underlying actions: the loss adjustment manual, dated May 1996 (Exhibit 14), the information memorandum, R&D 96-069, dated October 30, 1996 (destruction of harvested production having zero value) (Exhibit 15), and the potato loss adjustment handbook, dated June 1997 (Exhibit 16).

32. The record does not contain a contemporaneous report by an adjuster indicating the condition (in terms of harvestable and storable) of the potatoes at the time of harvest; there is no evidence of

an assessment made in accordance with the terms and conditions of the SRA (potatoes were not sent directly to a processor). The anecdotal evidence in the record does not represent relevant evidence to establish the condition of the potatoes to be considered under the SRA. For example, the insurance company states: "Prior to harvest, Hite dug up samples of his potato crop, sliced the potato samples and discovered tuber damage from heat necrosis." (Brief at 3). The referenced statements in the deposition of Mr. Hite state, "we dug them up different times and looked at them. They showed stress." And, "you dig them up and you slice them, just like I was saying before. You take a little knife and you slice them and look for -- inside of them for defects or impurities or anything inside." He noticed heat necrosis, bruising, and sprouting. (Exhibit 25 at 2718-19, 2756.)

33. From the two insured units, the insured harvested and stored 10,707 cwt. of potatoes. These potatoes were harvested by machine. The Board finds that the potatoes were of harvestable size. These potatoes were placed in storage. The record lacks a report by an adjuster made in accordance with the dictates of the SRA; that is, there has been no showing that an acceptable inspection occurred.

34. In the course of these proceedings, in an attempt to fully settle all of these disputes, the agency agreed to consider further additional information provided by the insurance company in support of the claimed earlier-year productions for various of the insureds. The agency provided details as to the insufficiency of the submitted materials, for example, production counts by the insured, without verifications of a processor were unacceptable under the applicable manual, and reports by processors which detailed quantities for an insured but did not identify the farm or unit or other basis to properly allocate the quantity were unacceptable (FF 6-7). (Government Memorandum of Sept. 24, 2001, with attachments.) Thereafter, the insurance company could submit additional information for consideration. The insurance company did not submit information to satisfy the noted deficiencies in the material. (Government Memoranda of Oct. 24 and 26, 2001.) The insurance company has not identified any inaccuracy in the particular determinations by the Government for the calculations regarding Earl J. Hite, or any other insured. The Government correctly determined that the information submitted in support of the claimed coverage was not acceptable proof.

Richard Weakland

35. In its revised determination concerning the policy of Richard Weakland, the FCIC takes issue with the production to count for one farm unit and the associated indemnity. For this unit, the insurance company found the production to count to be 1,048.8 cwt.; the Government found the production to count to be 2,465.1 cwt. In dispute are 1,416.3 cwt. of potatoes which the insurance company deemed to be of nonstorable quality. (Exhibits Z at 585-86, BB at 799-802, 817.) In the revised determination dated April 9, 1998, the explanation includes the following:

FCIC determined that on August 25 and 26, 1995, the insured delivered three loads of potatoes totaling 1,416.3 cwt. to Pennsylvania Co-Operative Potato Growers, Inc. The three loads were rejected due to their size and were subsequently returned to the farm and placed in storage, to eventually be fed to livestock. Our review found that

the loss adjuster did not count the 1,416.3 cwt. of stored potatoes as production to count because they were unmarketable.

.....

The MPCCI Potato Handbook defines nonstorable potatoes as potatoes damaged by heat necrosis or rot. Our review of this insured's loss documents does not indicate that the potatoes sustained any heat necrosis damage or rot, nor does it indicate the potatoes are of nonstorable quality. The loss documents indicate that the potatoes were unmarketable because of their size and not because of heat necrosis or rot.

Additionally, we found no evidence or supporting documentation that a licensed or certified grader performed any type of inspection or sampling that identified the insured's potatoes sustained any heat necrosis or soft rot damage. [The insurance company] provided a letter the insured received from Pennsylvania Potato Co-op informing him why several loads of potatoes were rejected. The letter indicated that the potatoes were rejected because of their size and because of bruising. The letter never indicated the potatoes sustained heat necrosis or rot damage.

FCIC concludes that this production determination error occurred because the loss adjuster applied incorrect procedures when he determined the insured's stored production to count. Our findings indicate the loss adjuster was aware of the differences in the loss adjustment procedures for potatoes grown in the Northern and Southern Regions, however, he was following the company's instructions.

(Exhibit BB at 799, 801-02.)

36. The insurance company has failed to identify, and the Board has not found, any document which indicates that an acceptable inspection occurred which supports the production to count utilized by the insurance company for the unit in question. Special reports by adjusters, dated September 28, and October 19, 1995, indicate that some potatoes were rejected and not marketable, and that some potatoes were small in size and bruised. The generic reports are not specific enough to permit one to conclude that an insurable loss occurred with regard to any weight of the potatoes. (Exhibit Z at 587-88.)

Robert M. Hite

37. Regarding the policy of Robert M. Hite, the initial report of acreage insured did not include farm units (farm serial numbers (FSN)) 459 and 1554 (Exhibit N at 203). After the final reporting date, the insurance company revised the insured acreage to include these farm units, as indicated on an undated, unsigned revised acreage report, with the explanation (as supported by letters dated October 4, 1995, and March 19, 1997) that the insurance agent has relied upon information from the Consolidated Farm Service Agency, and that information did not identify the two units (Exhibits N at 202, 207, O at 271-72).

38. In its initial determination and in its revised determination, the Government states that the insurance company improperly (because it failed to conduct an inspection as required by policy provisions) included these two farm units in the insured acreage for the 1995 crop year (Exhibits N at 197, P at 288-89). However, despite this conclusion, the calculations of premiums and indemnities found in the revised determination indicate that the Government treated these two units as insurable acreage (in contrast to the initial determination in which calculations utilized zero for premiums and indemnities (Exhibits N at 196, 252-53, P at 284, 297-98)). In its answer to the complaint, the Government relies upon the figures in its revised determination for arriving at the amount due from the insurance company. The calculations reveal that the Government treated the acreage from these farm units as insurable.

DISCUSSION

This dispute focuses upon two broad principal areas concerning multiple insureds: support for productivity for crop years preceding 1995, which affects premium payments and the guaranteed yields; and production to count of the harvested and stored potatoes during the 1995 crop year, which directly affects indemnities for that year and the premiums for 1996. A third matter concerns the insured acreage for Robert M. Hite.

The following paragraphs detail the rationale for resolving this dispute, given the specific language incorporated into the terms and conditions of the SRA, and the record developed. Thereafter, the discussion focuses upon the particular issues raised by the insurance company.

The regulations, handbooks, bulletins, and the like, referenced in the findings of fact are incorporated by reference into the SRA, such that they constitute terms and conditions governing the conduct and obligations of the parties (FF 1, 3). This much the parties agree upon, as stated in the complaint, and admitted in the answer:

The FCIC agreed to reinsure the policies written by reinsured companies, and pay a portion of the producer's premium, if the reinsured companies followed the rules and procedures dictated by the FCIC.

The FCIC's rules and procedures were set forth in the CFR, the crop insurance policies issued by Rain and Hail and approved by the FCIC, the Loss Adjustment Manual (the "LAM") and the various crop handbooks drafted by the crop insurance industry and approved by the FCIC.

Complaint at 3 (¶¶ 10-11); Answer at 1 (¶ 1).

Central to resolving the dispute over production in prior years, which relates to premium calculations, is the language in the underwriting rules, "If farm management records are used to support production reports, they must be substantiated by records from a marketing outlet, processor, packer, first handler, etc." (FF 7), and the potato policy, "If you do not provide the required

production report we will assign a yield for the crop year for which the report is not furnished” (FF 6). Regarding indemnity calculations, the potato handbook dictates the methodology of determining the production to count for an insured:

The percentage of potatoes to count, for stored or marketed potatoes, shall be the percentage as determined by an acceptable Federal/State Inspection or by a Company Inspection.

If potatoes are marketed or stored without an acceptable inspection, the production-to-count for such potatoes shall be equal to the gross weight (minus any determined dirt weight) of the potatoes marketed or stored.

(FF 17.)

Although written to address crop insurance regulations pertaining to cotton crops, the language found in a court opinion is equally applicable here: “The Regulations quoted above, which, in effect, require that crop losses insured against shall be definitely determined before they become compensable, and that satisfactory proofs of loss shall be furnished and approved before liability accrues, are not ambiguous, nor are they inconsistent with the Crop Insurance Act.” Scaife v. Federal Crop Ins. Corp., 167 F.2d 152, 154 (8th Cir. 1948). The manual, potato policy, and handbook focus the required analysis to resolve this dispute.

Under the terms and conditions of the SRA, the assessment of premiums or the payment of indemnities by an insurance company does not establish its entitlement to reimbursement from the Government or shift to the Government the burden of proof in a case such as this. The insurance company must establish entitlement to payment pursuant to the terms and conditions established in the SRA.

Premiums

The Government has utilized assigned yields (production averages) in calculating premiums for those years for which the supplemented record fails to substantiate an actual production for a given unit. This determination is fully in keeping with the dictates of the SRA. (FF 1, 3, 6-8.)

The insurance company has identified no specific records which establish a different production or calculation than those utilized by the Government. Without the factual proof required by the SRA, the calculations of the premiums by the insurance company are not supported and are not shown to be correct. The insurance company is not entitled to retain amounts relating to incorrect premiums.

The Government afforded the insurance company numerous opportunities to provide support for the premium calculations for each of the insureds. Statements from processors which do not indicate a farm or unit number or which otherwise do not permit one to conclude that the stated production came from the given farm unit are not sufficient support to establish a farm yield. (FF 23, 27, 28.)

The insurance company has not established that any conclusions or calculations of the Government are incorrect or inaccurate. By the very terms of the SRA, the productivity statements provided by the insured, without substantiation, do not provide a basis to utilize other than the assigned yields. A successful case would identify (by specific page number in the record) the documents which support productivity calculations and would indicate the specific calculations.

Indemnities

The potato policy directs that the production to count includes all harvested and appraised production (FF 11). As specified in the potato handbook, absent an acceptable inspection, the production to count is the weight of the marketed or stored potatoes (FF 17). Moreover, the insurance does not cover any loss of production due to damage that occurs or becomes evident after the potatoes have been placed in storage (FF 9, 13). Although the potato policy states that the "extent of any loss may be determined at the time the potatoes are placed in storage or delivered to a processor," this does not mean that the condition of the potatoes delivered to a processor after storage will indicate that damage occurred or became evident prior to the potatoes being placed in storage. The policy must be read as a whole. The insurance company has failed to identify any error by the Government. What is lacking for these insureds, for the indemnities in dispute, is an adjuster's report or other proof indicating that an acceptable inspection occurred and that other than the weight of harvested potatoes should be utilized. The record does not demonstrate any inaccuracy in the calculations by the Government or that the insurance company is entitled to more than the amount determined by the Government.

For each of the insureds, the Government correctly did not give weight to the anecdotal comments by the insureds and others and the reports of conditions at farms of other than the insured acreage observed for the report. For example, the observations regarding potatoes of Rick Weakland are directly applicable to the potatoes observed for the insured, but are not applicable to the potatoes of any other insureds (FF 21); the general adjuster's special report lacks useful specificity (FF 22); and the comments by the insureds (FF 23, 32) cannot be equated to an acceptable inspection under the terms and conditions of the SRA. Similarly, inspection reports from potato chip processors for inspections made well after harvest (FF 29) do not indicate what damage became evident after the time of harvest. For potatoes placed in storage or sent to a processor and rejected, the insurance company has not demonstrated that an acceptable inspection occurred, or that damage of any given weight of potatoes occurred or became evident prior to the potatoes being placed in storage. Specific, contemporaneous evidence regarding the potatoes of the insured is required to substantiate the condition of the potatoes of the insured at the time of harvest; an acceptable inspection is not meaningless terminology under the SRA. To utilize other than the harvested weight of potatoes, there must be proof that a given weight of potatoes was damaged by an insurable cause, and became evident, no later than the time of harvest; the insurance policy specifies that it does not cover any loss of production due to damage that occurs or becomes evident after the potatoes have been placed in storage. For the insurance company to prevail in recovering indemnities in this dispute, it would have had to identify an acceptable inspection in the record which the Government failed to give weight to or identify, with specifics, correct calculations of the indemnities which differ from the calculations by the Government. As discussed below, the marketability of the potatoes was not the

standard for an insurable loss. The insurance company has not satisfied its burden of proof. The Board denies this aspect of the dispute.

Robert M. Hite

The alleged dispute over insurable acreage is moot because an actual dispute does not exist. Despite the Government's initial determination and statement in its subsequent determination that acreage was not properly insured, its calculations of the amount due indicate that the Government treated the acreage as insured. (FF 37-38.) Because the Government is not claiming an amount for indemnities or premiums relating to this acreage, the matter is not in dispute in this case.

Insurance company

In its complaint, the insurance company asks this Board to determine first, that the insurance company substantially complied with all policies, procedures, rules, and regulations of the FCIC; second, that it is not in material breach of the 1995 SRA; and third, that the Government is not entitled to reimbursement of \$303,217 in alleged premium overstatements (\$26,959) and alleged premium overpayments (\$276,258).

The first matter, substantial compliance, is not the test for calculating premiums or indemnities. What controls are the facts established in the record, with those facts to dictate the premiums and indemnities in accordance with the terms and conditions of the SRA. Lacking substantiated production records and lacking acceptable inspection reports (or the results of an acceptable inspection), the SRA dictates how to calculate premiums, production guarantees, and indemnities. Had the insurance company produced the required substantiation, it would be entitled to retain the amount it disputes. The Board finds that the SRA is clear on how premiums, guarantees, and indemnities will be calculated absent substantiated information. The insurance company did not comply with the provisions to permit use of other than the average yields and productions to count as utilized by the Government; whether or not the insurance company substantially complied with all policies, procedures, rules, or regulations of the FCIC need not be determined, because that determination would not alter the result.

Similarly, the second matter, material breach, is not relevant. The Government has not asserted that the insurance company materially breached the SRA. The SRA directs what to do when given information is lacking; having not produced the information to the Government, the insurance company is not entitled to compensation inconsistent with the terms and conditions of the SRA. What is at issue here is only the insurance company's entitlement to relief under the SRA; this decision does not alter or address an insured's entitlement to relief from the insurance company or whether the insurance company breached its agreements with the insureds.

Regarding the third matter, entitlement to reimbursement, the Board has resolved this item above. The insurance company has failed to demonstrate that it is entitled to retain any of the amount deemed by the Government to be due and owing by the insurance company.

The insurance company raises other items in its brief. For example, it contends:

For the 1995 crop year, the FCIC had one, and only one, potato policy. All potato farmers, whether they lived north or south of the Mason Dixon line, received the same potato policy with the same terms and conditions. The provisions were published in the Code of Federal Regulations. Nevertheless, [the Government] argues that those who lived in Pennsylvania must be treated differently than those who lived just to the south in Maryland.

(Insurance Brief at 10.) In its briefing, the insurance company further maintains that the FCIC has failed to show that the policy provisions required the insurance company to include harvested damaged potatoes in production to count. In support, the insurance company asserts that (1) the policy insured against losses due to unmarketable potatoes and (2) it substantially complied with the loss adjustment procedures. Further, the insurance company contends that (3) placing potatoes in storage does not make them of storable quality, (4) losses occurred during the insurance period, not while potatoes were in storage, (5) the record is replete with evidence of pre-storage loss, and (6) the potatoes were unstorable.

The allegation that the basic policies insured against losses due to unmarketable potatoes rests on a faulty premise. Insurance premiums and indemnities are determined on a county-by-county basis. The insurance company has not demonstrated that coverage must be identical throughout the country. Rather, the insurance agreement recognizes variations in policies, as well as availability of different options, in different areas. The SRA, through the potato handbook (FF 15-17) and a bulletin (FF 18), makes a distinction between potatoes grown in the Northern Region, and those grown in the Southern Region. The potatoes here at issue, grown in Pennsylvania, fall under the Northern Region provisions. Thus, the marketability or not of the given potatoes is not relevant to the indemnities at issue. The insurance company incorrectly asserts both that the basic policy of the insureds insured against losses due to unmarketable potatoes and that the provisions applicable to the Southern Region must apply to the potatoes at issue. Contrary to the premise underlying the request for relief by the insurance company, marketability was not the correct standard for determining if an insurable loss occurred for these insureds.

As already noted, the insurance company did not substantially comply with the loss adjustment procedures. For the indemnities in dispute, the record is devoid of a report that demonstrates the condition of a given weight of potatoes at the time of harvest, such that one could determine that an insurable loss occurred or was evident before potatoes were placed in storage. Lacking such information, the insurance company should have utilized the weight of the potatoes as the production to count. Even utilizing the standard of marketability, the insurance company has not demonstrated that the potatoes were unmarketable because of an insurable loss, with the damage of any given weight of potatoes occurring or becoming evident before placement in storage.

The insurance company correctly notes that placing potatoes in storage does not make them of storable quality. However, only an acceptable inspection may demonstrate the condition of the potatoes to use other than the weight of the potatoes as the production to count. By parallel,

dumping potatoes does not demonstrate that they were damaged by an insurable cause. Hence, the SRA requires that an acceptable inspection occurs to recover for an insurable loss.

The assertions by the insurance company that losses occurred during the insurance period (not while potatoes were in storage), that the record is replete with evidence of pre-storage loss, and the potatoes were not storable are not borne out by the record for any given weight of potatoes. The general growing conditions in the area of the producers do not demonstrate the production on any individual farm. The statements from producers or others who lack the qualifications dictated in the reinsurance policies do not provide a basis to alter the figures for the harvested, stored potatoes. The quality reports from potato chip processors, based upon inspections several months after the potatoes were harvested, do not demonstrate that the damage occurred or became evident prior to the placement of the potatoes in storage and are not shown to be representative of the potatoes of the given insureds. In summary, the evidence does not constitute an acceptable inspection so as to demonstrate the condition of the potatoes at the time they were placed in storage. Given the lack of reliable proof, the insurance company is not entitled to indemnity reimbursements under the terms and conditions of its SRA which establishes the bases for determining the production to count.

The specific, proffered statements of the insureds and potato chip processors merit no weight under the terms and conditions of the insurance policies. They are not specific with regard to sample size and units reviewed, or were taken several months after harvest, so as not to reveal the condition of the potatoes at the time of harvest. Although the record demonstrates that many of the potatoes were not marketable at the time the insureds offered the potatoes to potato chip processors, the test for insurable loss was not marketability, as would have been the case with potatoes grown in designated southern states or had the insureds obtained quality options with the basic potato policies.

Interest

The insurance company asserts in its brief on the merits that the Government is not entitled to interest. Because the Government has not made a claim for interest (either for the entire amount or the \$42,675 not in dispute under the complaint), such that the insurance company has not sought an administrative review of the matter, the issue of interest is premature for resolution by this Board. 7 CFR 400.169.

Summary

This case may be summarized as the Government calculating premiums and indemnities in accordance with the terms and conditions of the SRA, based upon the facts presented. The SRA dictates how the insured acreage and production guarantees are to be determined, and the resulting premium. Also, the SRA specifies the methodology to determine and calculate insurable losses and the indemnity payment. The insurance company seeks to deviate from its agreement, as it relies upon unsupported prior production records for the insured and upon unsubstantiated conclusions that harvested and stored potatoes represented an insurable loss in their entirety. The anecdotal and other evidence relied upon by the insurance company regarding indemnities does not rise to the level of an acceptable inspection which is required to use other than the weight of the harvested and stored potatoes.

The record does not reveal that the Government did anything amiss in making its premium and indemnity calculations. The insurance company, with its adjusters and agents, failed to obtain the requisite proof to substantiate its calculations. The insurance company, without the proof that its premium or indemnity calculations are correct, does not prevail against the Government's calculations which have not been shown to deviate from the requirements of the SRA.

DECISION

The Board denies this appeal.

JOSEPH A. VERGILIO
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
October 27, 2003